STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94015

PROPOSED REGULATION TEXT[1]
(Alternative 2)

Prior Approval of Insurance Rates

RH05042749 **April 19, 2006**

§2642.4. Pure Premium.

"Pure premium" means the amount of losses per exposure, including ~~allocated loss adjustment~~ defense and cost containment expenses.

§2642.5. Rating Period.

"Rating period" means the period that must be accounted for in the application. ~~Unless otherwise determined pursuant to section 2646.3, t~~The rating period shall be one year commencing on the effective date of the rates. Nothing in this section shall be construed to specify the frequency of rate filings.

§2642.6. Recorded Period.

"Recorded period" means the historical period from which data are taken to provide the basis for the proposed rate. ~~Unless otherwise determined in accordance with section 2646.3, t~~The recorded period shall be the most recent three years for which reliable data are available.

§2642.7. Lines of Insurance.

(a) Wherever in this subchapter insurance is required to be classified by line, the classification shall be into one of the following categories:

(1) Fire
(2) Allied Lines
(3) Farmowners multiple peril
(4) Homeowners multiple peril
(5) Commercial multiple peril
(6) Inland marine
(7) Medical malpractice
(8) Earthquake
(9) Other liability
(10) Products liability
~~(10)~~ (11) Private passenger automobile liability
~~(11)~~ (12) Private passenger automobile physical damage

[1] Additions to existing text are indicated by underline; deletions are indicated by ~~strikethrough.~~ As indicated in the Workshop Notice issued on April 19, 2006, two versions of the regulation text, containing different leverage proposals, have been drafted. The changes in alternative 2 from alternative 1 are indicated in yellow highlight.

~~(12)~~ (13) Commercial automobile liability
~~(13)~~ (14) Commercial automobile physical damage
~~(14)~~ (15) Aircraft
~~(15)~~ (16) Fidelity
~~(16) Glass~~
(17) Burglary and theft
(18) Boiler and machinery.

(b) For purposes of this subchapter, mechanical breakdown and similar insurance covering loss caused by the failure or malfunction of a component or system of a motor vehicle, as described in California Insurance Code Section 116(c), shall be classified as private passenger auto liability.

(~~b~~c) Any insurer may disaggregate any of the foregoing lines, except homeowners multiple peril, private passenger automobile liability, and private passenger automobile physical damage, into two subcategories, “commodity” and “specialty.”

(~~c~~d) Specialty insurance shall include:

(1) Any single policy having an annual premium over $75,000;

(2) Any policy having a deductible or self-insured retention of $100,000 or more;

(3) Any excess property, excess liability, or umbrella policy, where none of the underlying policies include private passenger automobile liability, private passenger automobile physical damage, or homeowners coverage, or where the underlying policy is written by an unaffiliated insurer and covers at least the first $500,000 in losses;

(4) All policies for

(A) nuclear risks,
(B) pollution legal liability,
(C) product-tampering, product impairment, or product recall,
(D) kidnap and ransom,
(E) political risks,
(F) professional liability or errors and omissions, including medical malpractice
(G) directors' and officers' liability,
(H) boiler and machinery insurance,
(I) fidelity insurance,
(J) mortgage guaranty insurance,
(K) employer liability under the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. section 901 et seq.), the Jones Act (46 U.S.C. section 688), the Federal Employer Liability Act (45 U.S.C. section 51 et. seq.), or any similar statute,
(L) excess employer's liability over workers' compensation insurance; and
(M) Differences in conditions coverage.

(~~d~~e) Commodity insurance shall include all policies in the line that are not defined in this section as specialty.

§2643.2. Rating Basis.

Except as otherwise provided in this subchapter, rates are to be computed on the basis of premium charged per exposure. ~~The Commissioner shall, from time to time, specify the appropriate exposure base or bases by line in accordance with section 2646.3.~~ In lines where the Commissioner finds that rating on some other basis is more appropriate, the Commissioner shall authorize its use.

§2643.6. Interjurisdictional Allocations.

(a) Data shall be submitted with rate application. Where reliable data exist for California losses, ~~allocated loss adjustment~~ defense and cost containment expenses, ancillary income, commissions, state premium taxes, loss reserves, and unearned premium reserves, those data shall be used. Where data are maintained on a multi-state basis only, or where California data are not reliable, the multi-state data shall be allocated to California as follows:

(1) ~~Allocated and unallocated loss adjustment~~ Defense and cost containment and adjusting and other expenses: By dollars of incurred losses.
(2) Commissions and brokerage: By earned premium.
(3) Taxes, licenses, and fees: By actual statutory tax rate for premium tax; by premium for licenses and fees
(4) Other Acquisition: By number of written exposures or policies.
(5) General: By number of earned exposures or policies.

For purposes of this subsection, the determination whether data are "reliable" shall be made on the basis of whether the Commissioner finds, under the circumstances, that the data are authentic and believable. In making that finding, the Commissioner shall consider, among other things, whether the data were recorded by persons and under circumstances likely to produce accurate data, whether the data were relied upon by the party in its business, and whether the data are consistent with other data.

(b) Where an insurer submits recorded California data that varies from the California allocation of multi-state data allocated as specified in this section, the Commissioner shall require the insurer to demonstrate the accuracy of the data and to justify any deviation from the insurer's experience in other states. Where the Commissioner finds the demonstration or justification inadequate, he or she shall require the use of allocations rather than the submitted recorded data for California. Where the data are expressed as a percentage of earned premium, and are therefore mathematically related to the other components of premium, and the use of data other than the California allocation of multi-state data is authorized, appropriate adjustments shall be made to any related data and to any applicable regulatory standards.

(c) Where an insurer elects to disaggregate a line of insurance into commodity and specialty categories pursuant to section 2642.7, allocations between commodity and specialty shall be in the same proportion as specified in subdivision (a) of this section.

§2644.2. Maximum Permitted Earned Premium.

The maximum permitted earned premium is calculated as follows:

(a) (1) projected losses, as defined in section 2644.4,
(2) plus projected ~~allocated loss adjustment~~ defense and cost containment expenses, as defined in section 2644.8,
(3) plus projected fixed expenses, as defined in section 2644.9,
(4) minus projected ancillary income, as defined in section 2644.13,
(5) plus maximum fixed profit, as defined in section 2644.15,
(6) minus fixed investment income, as defined in section 2644.19(a),

~~(b) divided by~~
~~(1) 1.0,~~
~~(2) minus the variable expense factor, as defined in section 2644.14,~~
~~(3) minus the maximum profit factor, as defined in section 2644.15,~~
~~(4) plus the investment income factor, as defined in section 2644.19.~~

~~Stated as a formula:~~

$$\cancel{Max\ Permitted\ EP = \frac{losses + ALAE + fixed\ expenses - ancil\ income}{1 - var\ exp\ factor - profit\ factor + invest\ inc\ factor}}$$

(b) divided by the maximum denominator, as defined in section 2644.2(c).

Stated as a formula:

$$Max\ Permitted\ EP = \frac{losses + DCCE + fixed\ expenses - ancil\ income + max\ fixed\ profit - fixed\ invest\ inc}{max\ denom}$$

(c) The maximum denominator means:

(1) 1.0,
(2) minus the variable expense factor, as defined in section 2644.14,
(3) minus the maximum variable profit factor, as defined in section 2644.15,
(4) plus the variable investment income factor, as defined in section 2644.19(b).

Stated as a formula:

$$Max\ denom = 1 - var\ exp\ factor - max\ var\ profit\ factor + var\ invest\ inc\ factor$$

§2644.3. Minimum Permitted Earned Premium.

The minimum permitted earned premium is calculated as follows:

(a) (1) projected losses, as defined in section 2644.4,
(2) plus projected ~~allocated loss adjustment~~ defense and cost containment expenses, as defined in section 2644.8,
(3) plus projected fixed expenses, as defined in section 2644.9,
(4) minus projected ancillary income, as defined in section 2644.13,
(5) plus minimum fixed profit factor as defined in section 2644.15,
(6) minus fixed investment income, as defined in section 2644.19(a),

~~(b) divided by~~
~~(1) 1.0,~~
~~(2) minus the variable expense factor, as defined in section 2644.14,~~
~~(3) minus the minimum profit factor, as defined in section 2644.15,~~
~~(4) plus the investment income factor, as defined in section 2644.19.~~

~~Stated as a formula:~~

$$\cancel{Min\ Permitted\ EP = \frac{losses + ALAE + fixed\ expenses - ancil\ income}{1 - var\ exp\ factor - profit\ factor + invest\ inc\ factor}}$$

(b) divided by the minimum denominator, as defined in section 2644.3(c).

Stated as a formula:

$$Min\ permitted\ EP = \frac{losses + DCCE + fixed\ expenses - ancil\ income + min\ fixed\ profit - fixed\ invest\ inc}{min\ denom}$$

(c) The minimum denominator means:

(1) 1.0,
(2) minus the variable expense factor, as defined in section 2644.14,
(3) minus the minimum variable profit factor, as defined in section 2644.15,
(4) plus the variable investment income factor, as defined in section 2644.19(b).

Stated as a formula:

$$Min\ denom = 1 - var\ exp\ factor - min\ var\ profit\ factor + var\ invest\ inc\ factor$$

§2644.4. Projected Losses.

(a) “Projected losses” means the insurer's historic losses per exposure, adjusted by catastrophe adjustment, as prescribed in section 2644.5, by loss development, as prescribed in section 2644.6, and by loss trend, as prescribed in section 2644.7.

(b) Projected losses shall be calculated by applying the loss trend factor separately to data from each accident-year in the recorded period. However, ~~for medical malpractice insurance, where the use of~~ for claims-made policies ~~predominates throughout the line~~, ~~projected losses are more appropriately evaluated on a report-year basis; accordingly, for medical malpractice insurance~~ projected losses shall be calculated on a report-year basis~~, except where occurrence policies predominate~~.

(c) Where an insurer elects to disaggregate a line of insurance into commodity and specialty categories pursuant to section 2642.7, the insurer shall, in lieu of the computation of projected losses specified in sections 2644.5 through 2644.7, tender an alternative computation of projected losses for the specialty category, which the Commissioner shall approve if he or she finds the projection to have been made in a sound actuarial manner. Nothing in this section precludes the Commissioner from requiring the additional filing of projected losses computed in the manner specified in sections 2644.5 through 2644.7.

(d) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and that the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.

§2644.5. Catastrophe Adjustment.

In those insurance lines and coverages where catastrophes occur, the catastrophic losses of any one accident year in the recorded period are replaced by a loading based on a multi-year, long-term average of catastrophe claims. The ~~Commissioner shall, from time to time, prescribe the~~ number of years over which the average shall be calculated ~~in accordance with section 2646.3~~ shall be at least 21 and 39 years for homeowners multiple peril fire and wind, respectively, and at least 10 years for private passenger auto physical damage. Where the insurer does not have enough years of data, the insurer's data shall be supplemented by data from the most recent California advisory loss cost filing from the Insurance Services Office. There shall be no catastrophe adjustment for private passenger auto liability.

§2644.6. Loss Development.

"Loss development" is the process by which reported losses are adjusted for anticipated payout patterns. Loss development shall be presented as a loss-development triangle, based on the average of the ratios of losses for the three most recent accident-years or report-years available for a reporting interval~~, for as many reporting intervals as the Commissioner may prescribe for a given line in accordance with section 2646.3~~. Filings shall contain both paid losses and case-specific reserves, stated separately. Loss development may employ either paid losses or the sum of paid losses and case-specific reserves~~, provided that if the ratio of case-specific reserves to paid losses increases by an amount greater than a figure to be specified by the Commissioner for the respective lines, in accordance with section 2646.3, loss development shall be based solely on paid losses~~.

§2644.7. Loss and Premium Trend.

"Loss trend" and "premium trend" is the process by which forces not reflected in historical loss and premium data are expected to affect losses and premiums in the rating period.

(a) ~~Loss trend factors shall be established in accordance with section 2646.3 for all insurers writing a given line.~~ ~~(b) The Commissioner shall, from time to time, adopt trend factors for each line in accordance with section 2646.3.~~ Trend factors shall be based on the exponential curve of best fit, as measured by the coefficient of determination, and as modified by the Commissioner to take into account factors not reflected in the historical data. Loss trend ~~Trend~~ factors shall be developed using ~~industry-wide~~ company-specific paid ~~pure premium~~ loss, closed claim count and earned exposure data. Premium trend factors shall be developed using company-specific premium per exposure data. The insurer's most recent twelve quarters of rolling calendar year data shall be used.

(~~c~~b) Where the trend factor within a given line significantly varies by subline, by policy limits, by region of the state, or by coverage, the ~~Commissioner~~ insurer shall~~, in accordance with section 2646.3, adopt~~ calculate separate trend factors in accordance with that evidence.

(~~d~~c) ~~Changes in the law such as that created by Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287 can be expected to have a substantial effect on payouts, and consequently the Commissioner shall specify, in accordance with section 2646.3, the manner in which loss data predating Moradi-Shalal shall be adjusted in affected lines to take this change in the law into account.~~ For homeowners multiple peril and private passenger automobile liability and physical damage, the standard for full credibility for loss trend shall be 6000 claims. Partial credibility shall be the square root of the ratio of the actual number of claims divided by the full credibility standard. For private passenger automobile, the complement of credibility for loss trend shall be calculated using the latest available Fast Track paid loss, closed claim count and earned exposure data. The complement shall be based on the exponential curve of best fit to the most recent twelve quarters of rolling calendar year data.

§2644.8. Projected ~~Allocated Loss Adjustment~~ Defense and Cost Containment Expenses.

(a) "Projected ~~allocated loss adjustment~~ defense and cost containment expenses" means the company's historic costs per exposure associated with the ~~adjustment~~ defense and cost containment of ~~specific~~ claims, developed and trended in the manner described in sections 2644.6 and 2644.7.

(b) Where an insurer elects to disaggregate a line of insurance into commodity and specialty categories pursuant to section 2642.7, the insurer may, in addition to the computation of projected ~~allocated loss adjustment~~ defense and cost containment expenses specified in this section, tender an alternative computation of projected ~~allocated loss adjustment~~ defense and cost containment expenses for the specialty category, which the Commissioner shall approve if he or she finds the projection to have been made in a sound actuarial manner.

§2644.9. Projected Fixed Expenses.

"Projected fixed expenses" means allowable historic fixed expenses per exposure, adjusted for expense trend, as prescribed in section 2644.11, subject to the efficiency standard specified in section 2644.12. "Fixed expenses" consist of the following:

(a) other acquisition, field supervision, and collection expenses incurred

(b) plus general expenses incurred

(c) plus state and local taxes, licenses, and fees incurred

(d) minus premium taxes

(e) plus ~~unallocated loss adjustment~~ adjusting and other expenses.

Commission and brokerage expenses shall not be included in fixed expenses.

§2644.10. Excluded Expenses.

The following expense items shall not be allowed for ratemaking purposes:

(a) Political contributions and lobbying.

(b) Executive compensation that exceeds the reasonable amount for such compensation~~, as the Commissioner shall from time to time determine in accordance with section 2646.3~~.

For purposes of this computation, the following shall apply:

(1) "Executive" means the insurer's five highest-paid policymaking positions in each insurance group.
(2) "Compensation" means the total cash paid, including salary and bonus.
(3) "Maximum permissible executive compensation" means:

(A) For the highest paid executive in the group:
$\text{max comp} = 1077(10^{1.4600 + 0.4060 \log X})$

(B) For the second-highest paid executive in the group:
$\text{max comp} = 1077(10^{1.4140 + 0.3490 \log X})$

(C) For the third-highest paid executive in the group:
$\text{max comp} = 1077(10^{1.2310 + 0.3820 \log X})$

(D) For the fourth-highest paid executive in the group:
$\text{max comp} = 1077(10^{1.2470 + 0.3580 \log X})$

(E) For the fifth-highest paid executive in the group:
max comp = $1077(10^{1.2460 + 0.3420 \log X})$

where X is the greater of (i) the insurer's total countrywide direct earned premium for the most recent completed calendar year for lines of business subject to Proposition 103 divided by 1,000,000 or (ii) 70.

(c) Bad faith judgments and associated ~~allocated loss adjustment~~ defense and cost containment expenses.

(d) All costs attendant to the unsuccessful defense of discrimination claims.

(e) Fines and penalties.

(f) Institutional advertising expenses. "Institutional advertising" means advertising not aimed at obtaining business for a specific insurer and not providing consumers with information pertinent to the decision whether to buy the insurer's product.

(g) All payments to affiliates, to the extent that such payments exceed the fair market rate or value of the goods or services in the open market.

Except as allocated pursuant to section 2643.6, calculation of the amounts expended on the foregoing expense items shall be based on the insurer's national expenditures, allocated among states in proportion to earned premium.

§2644.11. Expense Trend.

Allowable historic fixed expenses shall be adjusted for inflation. ~~The Commissioner shall, from time to time, determine in accordance with section 2646.3 the expense trend factor by which allowable historic fixed expenses shall be multiplied.~~ The expense trend factor may vary by insurance line. Unless the Commissioner finds some other method to be more appropriate, the expense trend factor shall be determined by taking the average year-to-year per-exposure fixed expense cost changes for the preceding three years.

§2644.12. Efficiency Standard.

(a) Notwithstanding any other provision of these regulations, projected fixed expenses shall not exceed

(1) the product of
(A) projected losses, as defined in section 2644.4,
(B) plus projected ~~allocated loss adjustment~~ defense and cost containment expenses, as defined in section 2644.8,
(C) minus projected ancillary income, as defined in section 2644.13,
(D) plus the maximum fixed profit, as defined in section 2644.15,
(E) minus the fixed investment income, as defined in section 2644.19(a),

(2) multiplied by
(A) the efficiency standard, as specified in subdivision (b) of this section,
(B) minus the variable expense factor, as defined in section 2644.14,

(3) divided by
(A) 1.0,
(B) minus the maximum variable profit factor, as defined in section 2644.15,
(C) plus the variable investment income factor, as defined in section 2644.19(b),

(D) minus the efficiency standard, as specified in subdivision (b) of this section.

Stated as a formula:

$$\cancel{Max\ fixed\ exp = \frac{(losses + DCCE - ancil\ income)(effic\ std - var\ exp\ factor)}{1\text{-}\ profit\ \ factor + invest\ inc\ \ factor - effic\ std}}$$

$$Max\ fixed\ exp = \frac{(losses + DCCE - ancil\ income + max\ fixed\ profit - fixed\ invest\ inc)(effic\ std - var\ exp\ factor)}{1\text{-}\ max\ var\ profit\ \ factor + var\ invest\ inc\ \ factor - effic\ std}$$

(b) The Commissioner shall~~, from time to time, adopt~~ calculate the efficiency standard ~~pursuant to section 2646.3~~ annually, which shall be expressed as a maximum allowable ratio of historic underwriting expenses to historic earned premiums, which represents the fixed and variable cost for a reasonably efficient insurer to provide insurance and to render good service to its customers. The efficiency standard shall be calculated as the arithmetic average of the latest three years for which data are available, using the consolidated Insurance Expense Exhibits of all insurers writing in California.

(c) The efficiency standard shall be set separately for each insurance line, and separately for insurers distributing through independent agents and brokers, through exclusive agents, and through employees of the insurer ~~not functioning as agents~~ selling insurance on a direct basis. In setting the efficiency standard, the Commissioner shall determine whether, in the long-term, efficiency will be enhanced and premiums lowered by adopting a separate standard for insurers writing large and small amounts of insurance in the line. If the Commissioner determines that such separate standards would have such long-term effects, he or she shall set the standard separately according to the amount of insurance being written in the line. In lines where the number of insurers employing a given distribution system is, in the judgment of the Commissioner, inadequate for the calculation of a mean that provides a useful efficiency standard, the Commissioner shall adopt a single efficiency standard for that line, which shall apply to all insurers writing in that line regardless of distribution system.

(d) In each category, the efficiency standard shall be set at the weighted mean (weighted by earned premium) expense ratio of insurers in that category. In calculating the average, the Commissioner may exclude insurers for which reliable data are not readily available or which reflect anomalous conditions.

§2644.15. Profit Factors.

(a) The "maximum variable profit factor" means

(1) The maximum permitted after-tax rate of return, as defined in section 2644.16,

(2) divided by the ~~product of~~

~~(A) the leverage factor, as defined in section 2644.17,~~

~~(B) multiplied by the~~ underwriting federal income tax factor, as defined in section 2644.18,

(3) multiplied by the unearned premium reserve factor, as defined in section 2644.21,

(4) multiplied by the surplus ratio, as defined in section 2644.22.

(b) The "minimum variable profit factor" means

(1) the minimum permitted after-tax rate of return, as defined in section 2644.16,

(2) divided by the ~~product of~~

~~(A) the leverage factor, as defined in section 2644.17,~~

~~(B) multiplied by the~~ underwriting federal income tax factor, as defined in section 2644.18,

(3) multiplied by the unearned premium reserve factor, as defined in section 2644.21,

(4) multiplied by the surplus ratio, as defined in section 2644.22.

(c) The "maximum fixed profit" means

(1) The maximum permitted after-tax rate of return, as defined in section 2644.16,
(2) divided by the underwriting federal income tax factor, as defined in section 2644.18,
(3) multiplied by the sum of the projected loss, as defined in section 2644.4, and the projected defense and cost containment expense, as defined in section 2644.8,
(4) multiplied by the loss reserve factor, as defined in section 2644.21,
(5) multiplied by the surplus ratio, as defined in section 2644.22.

(d) The "minimum fixed profit" means

(1) The minimum permitted after-tax rate of return, as defined in section 2644.16,
(2) divided by the underwriting federal income tax factor, as defined in section 2644.18,
(3) multiplied by the sum of the projected loss, as defined in section 2644.4, and the projected defense and cost containment expense, as defined in section 2644.8,
(4) multiplied by the loss reserve factor, as defined in section 2644.21,
(5) multiplied by the surplus ratio, as defined in section 2644.22.

§2644.16. Rate of Return.

(a) The maximum permitted after-tax rate of return means the risk premium, as defined in section (b), plus the risk-free rate, as defined in section 2644.20(d).

(b) The ~~Commissioner shall, from time to time, determine, in accordance with section 2646.3, the maximum and minimum permitted after-tax rate of return~~ risk premium for property and casualty insurance ratemaking~~. The maximum and minimum profit factors~~ shall ~~represent~~ be calculated as the ~~range of yields on investments in other enterprises presenting risks to investors comparable to~~ 30-year historical statutory accounting return on property and casualty insurance, as calculated by the Insurance Information Institute, adjusted to include unrealized capital gains as calculated from A.M. Best Company data and the federal income tax liabilities thereon, and also adjusted to reflect average surplus instead of year-end surplus, minus the average income return on short, intermediate and long-term U.S. Treasury bonds, as calculated from the Ibbotson Stock, Bonds, Bills and Inflation Yearbook.~~ giving due consideration to the competing interests of investors and consumers, and taking into account the fact that insurance is imbued with the public interest and that its purchase is sometimes legally required.~~

(c) The maximum permitted after-tax rate of return shall be adjusted based on the surplus shown in the insurer's most recent consolidated statutory annual statement, page 3, line 35. as follows:

(1) surplus greater than $3 billion, minus 1%
(2) surplus greater than $0.25 billion but less than $1 billion, plus 1%
(3) surplus less than $0.25 billion, plus 3%

(d) The minimum permitted after-tax rate of return shall be -7%, which the Commissioner finds is high enough to prevent any undue risk of insolvency and to prevent injury to competition through predatory pricing.

§2644.17. Leverage Factor and Surplus.

(a) "Leverage factor" means the ratio of the sum of the industry-wide net ~~written~~ unearned premium~~s~~ reserves and net unpaid loss and loss adjustment expense reserves to the average of the industry-wide year-beginning and year-end surplus.

~~(b) The Commissioner shall, from time to time, establish, in accordance with section 2646.3,~~ ~~calculate~~ industry-wide

~~leverage factors for each insurance line~~ annually. ~~For medical malpractice, other liability and product liability, there shall be separate leverage factors for claims-made and occurrence.~~ ~~Each insurer's~~ ~~Total industry~~ ~~surplus shall be allocated to its respective lines~~ ~~of business~~ ~~in proportion to the industry-wide reserves. In determining the leverage ratios, the Commissioner shall give due consideration to regulatory standards of solvency and actual industry-wide, all-lines ratio of net written premiums to surplus.~~ ~~The leverage factor for each line of business shall be the premium divided by the allocated surplus, then multiplied by the ratio of the 30-year historical average total industry leverage divided by the total industry leverage in the most recent year~~. ~~Notwithstanding the result of the calculation, t~~The leverage factor for earthquake shall be divided by ~~1~~3.0. The leverage factor for homeowners shall be divided by 2.0. For other lines of business subject to catastrophes, mass torts and other unusual events, the Commissioner shall modify the leverage factor~~s~~ where he finds that ~~they~~ it does not provide a reliable estimate of future risk.

~~(c) The Commissioner finds that investors' perceived investment risk may vary from line to line. In lines perceived to have higher-risk, the Commissioner may establish, in accordance with section 2646.3, higher surplus requirements, and insurers may earn the rate of return on the higher surplus. Thus, while the rate of return does not vary by line, insurance perceived to have a greater risk will yield higher returns per premium dollar.~~

§2644.18. Federal Income Tax Factors.

~~(a) "Federal income tax factor" means 1.0 minus the insurer's effective federal income tax rate reported in the most recent year for which historical data are available, giving full account to all tax credits and offsets used or available to the insurer. Where there has been a change in tax laws between the recorded period and the rating period, the effective tax rate shall be calculated using the historical data and the tax rules for the rating period.~~
~~(b) Where the insurer had a net tax credit, or where the insurer had a net tax liability on a net pretax loss, the effective tax rate shall be zero and~~
~~(1) if the insurer had a net tax credit, the amount of the credit shall be added, as a positive number, to nationwide projected ancillary income;~~
~~(2) if the insurer had a net tax liability, the amount of the liability shall be subtracted from nationwide projected ancillary income.~~
~~(c) Where the insurer's effective tax rate reported in the most recent year for which historical data are available exceeded 34% and the insurer had a net tax liability on a net pretax profit, the effective tax rate shall be 34% and the amount by which the tax liability exceeded 34% shall be subtracted from nationwide ancillary income.~~

(a) "Underwriting federal income tax factor" means 1.0 minus the prospective federal income tax rate on underwriting. The Commissioner finds that the prospective federal income tax rate on underwriting is 35%.

(b) "Investment federal income tax factor" means 1.0 minus the prospective federal income tax rate on investment income. The prospective federal income tax rate on investment income shall be calculated using the weighted yield, adjusted for investment expenses, computed in section 2644.20 and shall take into account any tax preferences and exemptions for the income from each asset class and from each category of bond issuer. The Commissioner finds that the prospective federal income tax rate on taxable investment income is 35%, on capital gains is 34.1%, on tax-exempt bonds is 5.25% and on stock dividends is 14.175%.

§2644.19. Investment Income Factors.

~~"Investment income factor" means the projected yield, as defined in section 2644.20, multiplied by the sum of~~
~~(a) the reserves ratio, as defined in section 2644.21,~~
~~(b) plus the surplus ratio, as defined in section 2644.22~~

(a) "Fixed investment income" means the projected yield, as defined in section 2644.20,
(1) multiplied by the ratio of the investment federal income tax factor and the underwriting federal income tax factor, as defined in section 2644.18,

(2) multiplied by the loss reserves ratio, as defined in section 2644.21,
(3) multiplied by the sum of
(A) the projected losses, as defined in section 2644.4,
(B) plus the projected defense and cost containment expenses, as defined in section 2644.8,
(4) multiplied by 1.0 plus the surplus ratio, as defined in section 2644.22.

Stated as a formula:

$$\mathit{Fixed\ invest\ inc} = \mathit{yield} \times \frac{\mathit{FIT}_{\mathit{inv\ inc}}}{\mathit{FIT}_{\mathit{und}}} \times \mathit{loss\ reserves\ ratio} \times (\mathit{loss} + \mathit{DCCE}) \times (1 + \mathit{surplus\ ratio})$$

(b) "Variable investment income factor" means the projected yield, as defined in section 2644.20,
(1) multiplied by the ratio of the investment federal income tax factor and the underwriting federal income tax factor, as defined in section 2644.18,
(2) multiplied by the ~~sum of~~
~~(A) the~~ unearned premium reserves ratio, as defined in section 2644.21,
(~~B~~3) multiplied by 1.0 plus the surplus ratio, as defined in section 2644.22.

Stated as a formula:

$$\mathit{Var\ invest\ inc\ \ factor} = \mathit{yield} \times \frac{\mathit{FIT}_{\mathit{inv\ inc}}}{\mathit{FIT}_{\mathit{und}}} \times \mathit{uep\ reserves\ ratio} \times (1 + \mathit{surplus\ ratio})$$

§2644.20. Projected Yield.

~~"Projected yield" means the insurer's imbedded yield in the most recent year for which investment results have been reported, plus an average of the insurer's realized capital gains over the most recent five years. Imbedded yield shall be calculated as the insurer's net investment income, excluding capital gains, divided by the average of the insurer's start-of-year and year-end surplus and reserves for the most recent year for which investment results have been reported.~~

(a) "Projected yield" means the weighted average yield computed using the insurer's actual portfolio and yields currently available on securities in US capital markets. The weights shall be determined using the insurer's most recent consolidated statutory annual statement, and shall be computed by dividing the insurer's assets in each separate asset class shown on page 2, lines 1 through 5 of the insurer's consolidated statutory annual statement, by the total of lines 1 through 5. The yields for each asset class shall be based on an average of the most recent available 3 complete months, as of the date of filing.

(b) The bond asset class shall be subdivided into the issuer categories of US government bonds, other taxable bonds and tax exempt bonds and into the maturity categories of short, intermediate and long-term shown. For the purposes of this section, "US government" means the sum of rows 1.7, U.S. governments, and 2.7, all other governments, of schedule D, part 1A, section 1 of the insurer's consolidated statutory annual statement, "other taxable" means the sum of rows 6.7, public utilities, 7.7, Industrial and miscellaneous, 8.7, credit tenant loans, 9.7, parent, subsidiaries and affiliates, and half of row 5.7, special revenue and special assessments, and "tax-exempt" means the sum of rows 3.7, states, territories and possessions, 4.7, political subdivision of states, territories and possessions, and half of row 5.7. For the purposes of this section, "short-term" means one year or less, "intermediate-term" means more than one year through 10 years, and "long-term" means more than 10 years.

(c) "Yields currently available on securities in US capital markets" means,

(1) US government bonds

(A) Short: yield on the 3-month US Treasury bill as provided in the Federal Reserve H.15 statistical release

(B) Intermediate: yield on the 10-year US Treasury bond as provided in the Federal Reserve H.15 statistical release

(C) Long: yield on the 20-year US Treasury bond as provided in the Federal Reserve H.15 statistical release

(2) Other taxable bonds

(A) Short: yield on 3-month financial commercial paper as provided in the Federal Reserve H.15 statistical release

(B) Intermediate: average yield on 10-year corporate A and AA rated bonds as provided by Yahoo.com/ValuBond

(C) Long: average yield on 20-year corporate A and AA rated bonds as provided by Yahoo.com/ValuBond

(3) Tax exempt bonds

(A) Short: yield on short-term other taxable bonds times 1 minus the federal income tax rate of 35%

(B) Intermediate: average yield on 10-year municipal A and AA rated bonds as provided by Yahoo.com/ValuBond

(C) Long: average yield on 20-year municipal A and AA rated bonds as provided by Yahoo.com/ValuBond

(4) Common stock

(A) Dividends: ten-year average income return as provided in the Ibbotson yearbook

(B) Capital gains: the risk-free rate, below, plus 8%, which the Commissioner finds represents the risk-premium for common stock investments generally, minus dividends, above

(5) Preferred stock dividends: Mergent Bond Record

(6) Mortgage loans: yield on long-term other taxable bonds, above

(7) Real estate: the risk-free rate, below, plus 2%, which the Commissioner finds represents the risk-premium for real estate investments

(8) Cash and short term: yield on short-term US Treasury bills, above

(9) Other: yield on common stock, above

(d) The "risk-free rate" means the average of the short, intermediate and long-term US government bonds, above, except that the short-term shall be one month instead of three and the medium-term shall be five years instead of ten.

(e) The projected yield shall be reduced by the ratio of incurred investment expenses, page 11, line 25, column 3, of the insurer's consolidated statutory annual statement, divided by the total of cash and invested assets, page 2, line 10.

(f) The projected yield shall be multiplied by the ratio of cash and invested assets, page 2, line 10 of the insurer's consolidated statutory annual statement, divided by the sum of reserves, page 3, lines 1, 3 and 9, and surplus, page 3, line 35.

§2644.21. Reserves Ratio.

~~"Reserves ratio" means~~

~~(a) the average of the last two years'~~

~~(1) loss reserves plus~~

~~(2) loss adjustment expense reserves, plus~~

~~(3) unearned premium reserves~~
~~(b) divided by the earned premium for the most recent year for which data are available.~~
(a) "Unearned premium reserves ratio" means
(1) the average of the last two years unearned premium reserves
(2) divided by the earned premium for the most recent year for which data are available.

(b) "Loss reserves ratio" means
(1) the average of the last two years'
(A) loss reserves plus
(B) loss adjustment expense reserves
(2) divided by the incurred loss and defense and cost containment expense for the most recent year for which data are available.

(c) There shall be one industry-wide unearned premium reserves ratio and one loss reserves ratio for each line of business. The industry-wide numbers shall be the sum of all such numbers taken from the California state page of the statutory annual statement for all insurers doing business in California. Countrywide adjusting and other expense reserves from Best's Aggregates & Averages shall be allocated to California by loss and defense and cost containment reserves. For medical malpractice, other liability and products liability, California premium and reserves shall be allocated between occurrence and claims-made using countrywide numbers from Best's Aggregates & Averages. Notwithstanding the result of the calculation, the industry-wide loss reserves ratio for earthquake shall be 1.0. For other lines of business subject to catastrophes, mass torts and other unusual events, the Commissioner shall modify the industry-wide numbers where he finds that they do not provide a reliable estimate of future expectations of the reserve ratios.

(d) Insurers who have not experienced significant increases or decreases in their written premium shall calculate unearned premium reserves based on their own data, using the formula in subsection (a). Insurers with complete, credible paid loss development data shall derive loss reserve ratios from that data using three-year weighted average paid development factors. All other insurers shall use the industry-wide reserve ratios.

§2644.23. Credibility Adjustment.

(a) To the extent that the maximum and minimum permitted earned premiums are based upon data that lack credibility, a credibility adjustment shall be made~~, as appropriate, to projected losses, projected allocated loss adjustment expenses, projected loss development, and projected allocated loss adjustment expenses development~~.

(b) ~~The Commissioner shall, from time to time, specify credibility criteria and appropriate sources of substitute data in accordance with section 2646.3.~~ For homeowners multiple peril and private passenger auto liability and physical damage the standard for full credibility shall be 3000 claims. Partial credibility shall be the square root of the ratio of the actual number of incurred claims in the experience period divided by the full credibility standard.
~~(c) The credibility adjustment shall consist of adding to the insurer's data sufficient additional data, drawn from an approved source of substitute data, approved in accordance with section 2646.3, to provide a total sample size sufficient to meet the applicable credibility criterion established by the Commissioner.~~

(c) When the loss and defense and cost containment expense data is less than fully credible, in the maximum and minimum premium formulas in sections 2644.2 and 2644.3, the following shall be substituted:
(1)The sum of
(A) the credibility weight, as defined in section 2644.23(b),
(B) multiplied by the sum of
(i) loss, as defined in section 2644.4,
(ii) plus defense and cost containment expense, as defined in section 2644.8,

(2) plus
(A) the difference of
(i) 1.0
(ii) minus the credibility weight, as defined in section 2644.23(b),
(B) multiplied by the complementary loss and defense and cost containment expense, as defined in section 2644.23(d).

Stated as a formula:

$$Credibility\ weight \times (loss + DCCE) + (1 - credibility\ weight) \times comp\ loss\ DCCE$$

(d) The complementary loss and defense and cost containment expense means
(1) the product of
(i) the trended current rate level premium, as defined in section 2644.24,
(ii) multiplied by 1.0 plus the complement trend, as defined in section 2644.23(e),
(iii) multiplied by the maximum denominator, as defined in section 2644.2(b).
(2) minus the sum of
(i) the fixed expenses, as defined in section 2644.9,
(ii) minus the ancillary income, as defined in section 2644.3,
(iii) plus the maximum fixed profit, as defined in section 2644.15,
(iv) minus the fixed investment income, as defined in section 2644.19.

Stated as a formula:

$$Comp\ loss\ DCCE = TCRLP \times (1 + comp\ trend) \times max\ denom - (fixed\ expenses - ancil\ income + max\ fixed\ profit - fixed\ inve$$

(e) The complement trend means the annual net trend plus one, raised to the power of the number of years from the effective date of the current rate to the proposed effective date of the proposed rates, minus one.

Stated as a formula:

Comp trend = ((annual net trend+1)^number of years) -1

If the number of years from the effective date of the current rate to the proposed effective date of the proposed rates exceeds four, the complement trend shall be the annual net trend plus one, raised to the fourth power, minus one.

(f) The annual net trend is the annual loss trend plus one, divided by the annual premium trend plus one, minus one.

Stated as a formula:

Annual net trend = ((annual loss trend +1)/(annual premium trend +1))-1

(g) If the credibility weight is less than 25% the applicant may use an alternative complementary loss and defense and cost containment expense, provided that the alternative is actuarially sound and reasonable in the circumstance.

§2644.24. Trended Current Rate Level Earned Premium.

"Trended current rate level earned premium" means the earned premium per exposure for the recorded period adjusted to the current rate level based on subsequent rate changes and further adjusted for premium trend. The trend adjustment shall be calculated by applying the premium trend factor separately to data from each year in the recorded period.

§2644.25. Reinsurance.

(a) For all lines and sublines except for those listed in the next subparagraph, ratemaking shall be on a direct basis, with no consideration for the cost or benefits of reinsurance.

(b) For earthquake and for facultative reinsurance with attachment points above one million dollars, the maximum permitted earned premium is calculated as follows:

(1) The sum of
- (A) the quotient of
  - (i) the projected losses, as defined in section 2644.4,
  - (ii) plus the projected defense and cost containment expense, as defined in section 2644.8,
  - (iii) minus the projected reinsurance recoverables, as defined in section 2644.26,
  - (iv) plus the projected fixed expenses, as defined in section 2644.9,
  - (v) minus the projected ancillary income, as defined in section 2644.13,
  - (vi) plus the maximum fixed profit factor, as defined in section 2644.15,
  - vii) minus the fixed investment income, as defined in section 2644.19(a),
- (B) divided by the sum of
  - (i) 1.0,
  - (ii) minus the variable expense factor, as defined in section 2644.14,
  - (iii) minus the maximum variable profit factor, as defined in section 2644.15,
  - (iv) plus the variable investment income factor, as defined in section 2644.19(b).

(2) plus the quotient of
- (A) the reinsurance premium
- (B) divided by the difference of
  - (i) 1.0,
  - (ii) minus the variable expense factor

Stated as a formula:

$$Max\ permitted\ EP = \frac{losses + DCCE - recoverables + fixed\ expenses - ancil\ income + max\ fixed\ profit - fixed\ invest\ inc}{1 - var\ exp\ factor - var\ profit\ factor + var\ invest\ inc\ factor} + \frac{reins\ premium}{1 - var\ exp\ factor}$$

(c) Maximum fixed expenses shall be calculated using direct projected losses and defense and cost containment expenses.

(d) For the calculation of fixed investment income and maximum fixed profit, the numerator and denominator of the loss reserves ratio shall be adjusted for projected reinsurance recoverables, and for the variable investment income factor and the variable profit factor, the numerator and denominator of the unearned premium reserve ratio shall be adjusted to reflect the cash flows of the unearned reinsurance premium.

§2644.26. Reinsurance Recoverables.

"Reinsurance recoverables" means all amounts recoverable from reinsurers for paid and unpaid losses and loss adjustment expenses per exposure, including estimated amounts receivable for unsettled claims and claims incurred but not reported as provided under reinsurance agreements.

§2644.27 Variance Request

(a) A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."

(b) Requests for variances shall be filed with the Rate Filing Bureau on Form CA-RA[form number to be inserted later]. All such variance requests shall specifically:

(i) identify each and every variance request;

(ii) identify the extent or amount of the variance requested and the applicable efficiency standard or rate of return which will result if the variance is granted;

(iii) set forth the expected result or impact that the granting of the variance will have as compared to the expected result if the variance is denied; and

(iv) identify the facts and their source justifying the variance request and provide the documentation supporting the amount of the change in the applicable efficiency standard or rate of return that is being proposed.

(c) Requests for variances shall be filed at the same time as the prior approval application to which it applies or after the filing of the rate application and before any final determination regarding that application. Public notice of all variance requests shall be provided as set forth in California Insurance Code Sections 1861.05(c) and 1861.06.

(d) A variance request shall be deemed approved sixty days after public notice unless:

(i) a consumer or his or her representative requests a hearing within forty-five days of public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or

(ii) the Commissioner on his or her own motion determines to hold a hearing.

(e) Variance requests shall be determined in conjunction with the related prior approval application or rate hearing thereon.

(f) The following are the valid bases for requesting a variance:

(1) That the insurer will alter its mix of business in the rating period from the mix in the recorded period in a manner that affects the maximum and minimum permitted earned premium. Any such representation by the insurer shall specify the precise changes in business operations, shall be supported by a statement of an authorized official of the insurer indicating the manner in which the insurer plans to implement the change, and shall include such substantiating information as the Commissioner may require, including but not limited to specification of changes in the insurer's marketing program and relevant market research. Such representation shall be accompanied by the stipulation by the insurer to refund to consumers in a subsequent rate case if the change fails to materialize.

(2) That the insurer should be allowed to recover additional costs for bona fide loss-prevention and loss-reduction activities, provided the insurer can demonstrate loss reductions commensurate with the increased expenditures.

(3) That the insurer should be allowed a higher or lower efficiency standard due to:

(A) higher or lower quality of service, as demonstrated by objective measures of consumer satisfaction; or

(B) demonstrably superior or inferior service to markets historically inadequately served by the insurance industry.

(4) That the insurer should be allowed a higher or lower return on equity due to higher or lower financial investment in markets historically inadequately served by the insurance industry.

(5) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.

(6) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.

(7) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:

(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;

(B) A plan to restore the financial condition;

(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and

(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.

(d) In a hearing on an insurer's rollback obligation, the grounds for variance specified in subdivisions (c)(5), and (c)(7) of this section shall be valid bases for requesting a variance. For purposes of a hearing on an insurer's rollback obligation, a request for a variance based on subdivision (c)(7) of this section shall be a request for a variance from the minimum permitted earned premium. The provisions of subdivisions (c)(1), (c)(2), (c)(3), (c)(4), and (c)(6) are inapplicable to hearings on rollbacks.

ARTICLE 4.5 REFILING OF APPROVED RATES

§2644.50. Refiling of Approved Rates.
For homeowners multiple peril and private passenger auto liability and physical damage, to ensure that a rate previously approved remains non-excessive, an insurer shall file an application provided:

(a) The insurer’s most recent California calendar year incurred loss ratio, as filed on the state page of the insurer’s statutory annual statement, is less than 50%, and
(b) The insurer is currently operating with a rate approved three or more years ago.

Nothing in this section shall be construed to specify how often an insurer may submit a rate application, or shall apply for any other line of insurance.

~~**§2646.3. Generic Determinations.**~~

~~(a) "Generic determination" means a finding the Commissioner is required or authorized by these regulations to~~

~~make, which finding is intended to apply to the rate applications of several or all insurers.~~

~~(b) Where these regulations provide for the Commissioner to make a generic determination, the determination shall be made in a consolidated hearing upon not less than 30 days' written notice by first-class mail to all affected insurers and any other interested persons known to the department. All affected insurers and any other interested persons shall be entitled to become parties upon written request no less than 14 days after service of notice. The generic determination shall be adopted as a regulation pursuant to chapter 3.5 (sections 11340 through 11356 of the Government Code), upon final decision of the Commissioner, and shall be binding in hearings on individual insurers' rates.~~

~~(c) In a hearing convened for the purpose of making a generic determination, any person may propose that the pertinent data be disaggregated by geographic region, policy limits and deductibles, or amount of premium the insurer writes in the line and that separate determinations be make for each category. This subsection does not authorize insurer-by-insurer generic determinations.~~

~~(d) The Commissioner may, from time to time, review generic determinations to assess whether they are still sound. Such review may be on the Commissioner's own motion or on the petition of any person. Any such petition shall specify the changes in circumstances giving rise to the need for a revised determination.~~

~~(e) The Commissioner shall grant or deny the written petition in a written order. An order granting the petition shall call a hearing, and shall give notice pursuant to subdivision (b) of this section, to consider a revised generic determination. An order denying the petition shall specify the grounds for denial, which shall be either:~~

~~(1) that the petition has failed to raise any change in circumstances and merely alleges matters already considered, or~~

~~(2) that the changes in circumstance alleged do not warrant any change in the generic determination.~~

§2646.4. Hearings on Individual Insurers' Rates.

(a) This section applies to any request for a hearing on an individual insurer's rates, and applies to both requests made prior to a rate becoming effective and to requests concerning a rate in effect.

(1) A request for a hearing on a rate application shall be either delivered or mailed to the Department of Insurance within 45 days of the public notice specified in subdivision (c) of Insurance Code section 1861.05.

(2) A request for a hearing at any other time shall be based on the allegation that, pursuant to subdivision (a) of Insurance Code section 1861.05, a rate is "in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of" chapter 9 (commencing with section 1851) of part 2 of division 1 of the Insurance Code.

(b) A hearing on a rate application, and a hearing based on the allegation that a rate in effect is excessive, inadequate, unfairly discriminatory or otherwise in violation of chapter 9 (commencing with section 1851) of part 2 of division 1 of the Insurance Code shall be for the purpose of determining whether

~~(1)~~ the insurer has properly applied the statute~~,~~ and these regulations~~, and the generic determinations made pursuant to these regulations~~ in calculating the maximum or minimum permitted earned premium. ; ~~or~~

~~(2) the maximum permitted earned premium or minimum permitted earned premium calculated on the basis of the statute, these regulations, and the generic determinations made pursuant to these regulations~~ should be adjusted as provided in ~~subdivision (c) of this section. A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."~~

~~(c) The following are the valid bases for requesting a variance:~~

~~(1) That the insurer will alter its mix of business in the rating period from the mix in the recorded period in a manner that affects the maximum and minimum permitted earned premium. Any such representation by the insurer shall specify the precise changes in business operations, shall be supported by a statement of an authorized official of the insurer indicating the manner in which the insurer plans to implement the change, and shall include such substantiating information as the Commissioner may require, including but not limited to specification of changes in the insurer's marketing program and relevant market research. Such representation shall be accompanied by the stipulation by the insurer to refund to consumers in a subsequent rate case if the change fails to materialize.~~

~~(2) That the insurer should be allowed to recover additional costs for bona fide loss-prevention and loss-reduction activities, provided the insurer can demonstrate loss reductions commensurate with the increased expenditures.~~

~~(3) That the insurer should be allowed a higher or lower return on equity due to:~~

~~(A) higher or lower quality of service, as demonstrated by objective measures of consumer satisfaction; or~~

~~(B) demonstrably superior or inferior service to markets historically inadequately served by the insurance industry.~~

~~(4) That the insurer should be authorized a rate of return different from the rate of return determined pursuant to section 2644.16 on the ground that the insurer writes in only one line and its mix of business presents investment risks different from the risks that are typical of the line as a whole.~~

~~(5) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.~~

~~(6) That the insurer should be permitted to employ a loss trend other than the trend adopted pursuant to section 2644.7 because~~
~~(A) the trend in the insurer's own losses has exceeded the trend adopted pursuant to section 2644.7 in each of the three preceding years by at least five percent of the trend factor, or~~
~~(B) the trend in the insurer's own losses has been less than the trend adopted pursuant to section 2644.7 in each of the three preceding years by at least five percent of the trend factor.~~
~~"Trend factor" means one plus the annual trend expressed as a percentage.~~

~~(7) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.~~

~~(8) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:~~

~~(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;~~

~~(B) A plan to restore the financial condition;~~

~~(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and~~

~~(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.~~

~~(d) In a hearing on an insurer's rollback obligation, the grounds for variance specified in subdivisions (c)(4), (c)(5), and (c)(8) of this section shall be valid bases for requesting a variance. For purposes of a hearing on an insurer's rollback obligation, a request for a variance based on subdivision (c)(8) of this section shall be a request for a variance from the minimum permitted earned premium. The provisions of subdivisions (c)(1), (c)(2), (c)(3), (c)(6), and (c)(7) are inapplicable to hearings on rollbacks.~~

(~~e~~c) Relitigation in a hearing on an individual insurer's rates of a matter already determined ~~either~~ by these regulations ~~or by a generic determination~~ is out of order and shall not be permitted. However, the administrative law judge shall admit evidence he or she finds relevant to the determination of whether the rate is excessive or inadequate (or, in the case of a proceeding under Article 5, relevant to the determination of the minimum nonconfiscatory rate), whether or not such evidence is expressly contemplated by these regulations, provided the evidence is not offered for the purpose of relitigating a matter already determined by these regulations ~~or by a generic determination~~.